

S.72

An act relating to requiring telemarketers to provide accurate caller identification information

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. chapter 63, subchapter 1 is amended to read:

Subchapter 1: General Provisions

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§ 2464a. PROHIBITED TELEPHONE SOLICITATIONS

(a) Definitions. As used in this section, section 2464b, and section 2464c of this title:

(1) “Customer” means a customer, residing or located in Vermont, of a company providing telecommunications service as defined in 30 V.S.A. § 203(5).

(2) “Caller identification information” means information a caller identification service provides regard the name and number of the person calling.

(3) “Caller identification service” means a service that allows a subscriber of the service to have the telephone number, and where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber’s telephone.

(4) “Federal functional regulator” means a federal functional regulator as defined in 15 U.S.C. § 6809(2).

~~(3)~~(5) “Financial institution” means a financial institution as defined in 15 U.S.C. § 6809(3).

~~(4)~~(6) “Tax-exempt organization” means an organization described in Section 501(c) of the Internal Revenue Service Code (26 U.S.C. § 501(c)).

~~(5)~~(7) “Telemarketer” means any telephone solicitor. However, “telemarketer” does not include any telephone solicitor who is otherwise registered or licensed with, or regulated or chartered by, the Secretary of State, the Public Service Board, the Department of Financial Regulation, or the Department of Taxes; or is a financial institution subject to regulations adopted pursuant to 15 U.S.C. § 6804(a) by a federal functional regulator. Telephone solicitors registered with the Department of Taxes to collect Vermont income withholding, sales and use, or meals and rooms tax, but not registered with any other agency listed in this subdivision, shall provide to the Secretary of State an address and agent for the purpose of submitting to the jurisdiction of the Vermont courts in any action brought for violations of this section.

~~(6)~~(8) “Telephone solicitation”:

(A) means the solicitation by telephone of a customer for the purpose of encouraging the customer to contribute to an organization ~~which~~ that is not a

tax-exempt organization, or to purchase, lease, or otherwise agree to pay consideration for money, goods, or services; and

(B) does not include:

(i) telephone calls made in response to a request or inquiry by the called customer;

(ii) telephone calls made by or on behalf of a tax-exempt organization, an organization incorporated as a nonprofit organization with the State of Vermont, or an organization in the process of applying for tax-exempt status or nonprofit status;

(iii) telephone calls made by a person not regularly engaged in the activities listed in subdivision (A) of this subdivision ~~(6)~~(8); or

(iv) telephone calls made to a person with whom the telephone solicitor has an established business relationship.

~~(7)~~(9) "Telephone solicitor" means any person placing telephone solicitations, or hiring others, on an hourly, commission, or independent contractor basis, to conduct telephone solicitations.

(b) Prohibition.

(1) No telemarketer shall make a telephone solicitation to a telephone number in Vermont without having first registered in accordance with section 2464b of this title.

(2) No person shall make any telephone call to a telephone number in Vermont ~~which~~ that violates the Federal Trade Commission's Do Not Call Rule, 16 C.F.R. subdivision 310.4(b)(1)(iii), or the Federal Communication Commission's Do Not Call Rule, 47 C.F.R. subdivision 64.1200(c)(2) and subsection (d), as amended from time to time.

(3)(A) A telephone solicitor engaged in a telephone solicitation shall transmit, or cause to be transmitted, to a caller identification service in use by a consumer:

(i) the telephone solicitor's telephone number; and

(ii) if made available by the telephone solicitor's carrier, the telephone solicitor's name.

(B) Notwithstanding subdivision (3)(A) of this subsection, a telephone solicitor may substitute for its own name and number the name and the number, which is answered during regular business hours, of the person on whose behalf the telephone solicitor makes the telephone solicitation.

(c) Violation. A violation of this section shall constitute a violation of section 2453 of this title. Each prohibited telephone call shall constitute a separate violation. In considering a civil penalty for violations of subdivision (b)(2) of this section, the court may consider, among other relevant factors, the extent to which a telephone solicitor maintained and complied with procedures

designed to ensure compliance with the rules of the Federal Communications Commission and the Federal Trade Commission.

(d) Criminal Penalties. A telemarketer who makes a telephone solicitation in violation of subdivision (b)(1) of this section shall be imprisoned for not more than 18 months or fined not more than \$10,000.00, or both. It shall be an affirmative defense, for a telemarketer with five or fewer employees, that the telemarketer did not know, and did not consciously avoid knowing, that Vermont has a requirement of registration of telemarketers. Each telephone call shall constitute a separate solicitation under this section. This section shall not be construed to limit a person's liability under any other civil or criminal law.

§ 2464b. REGISTRATION OF TELEMARETERS

(a) Every telemarketer shall register with the Secretary of State, on a form approved by the Secretary. In the case of a telemarketer who hires, whether on an hourly, commission, or independent contractor basis, one or more persons to conduct telephone solicitations, only the person who causes others to conduct telephone solicitations need register. The Secretary of State may adopt rules prescribing the manner in which registration under this section shall be conducted, including a requirement of notice to the Secretary by the telemarketer when the telemarketer ceases to do business in Vermont.

(b) The Secretary of State shall require that each telemarketer designate an agent for the purpose of submitting to the jurisdiction of the Vermont courts in any action brought for violations of section 2464a of this title.

(c) The Secretary of State shall collect the following fees when a document described in this section is delivered to the Office of the Secretary of State for filing:

(1) Registration: \$125.00.

(2) Statement of change of designated agent or designated office, or both: \$25.00, not to exceed \$1,000.00 per filer per calendar year.

§ 2464c. PRIVATE CAUSE OF ACTION

Any person who receives a telephone call in violation of subsection 2464a(b) of this title may bring an action in Superior Court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. The ~~Court~~ court may issue an award for the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for each subsequent violation, whichever is greater. In considering the amount of punitive damages, the ~~Court~~ court may consider, among other relevant factors, the extent to which a telephone solicitor maintained and complied with procedures designed to ensure compliance with the requirements of sections 2464a and 2464b of this title. This section shall not limit any other claims the person may have under applicable law.

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Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.